

ASSEMBLY BILL

No. 1618

Introduced by Assembly Member Feuer

February 23, 2007

An act to amend Section 24344 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1618, as introduced, Feuer. Corporation taxes: deductions: interest expense.

The Corporation Tax Law imposes taxes measured by income and, in the case of a business with income derived from, or attributable to, sources both within and without this state, apportions business income between this state and other states and foreign countries in accordance with a 4-factor formula, with certain exceptions. That law distinguishes between business income that is subject to apportionment by formula, and nonbusiness income that is not subject to apportionment by formula, but, rather, is subject to allocation to either the commercial domicile of the taxpayer in the case of income from intangible property, or to the physical location of the property in the case of income from tangible property.

The Corporation Tax Law limits the amount of interest expense that can be deducted by a taxpayer by allocating interest expense to specified types of income, including income that is not included in calculating California tax liability.

The Supreme Court of the United States held that the provisions of the Corporation Tax Law limiting the amount of interest expense that can be deducted by allocating interest expense to the specified types of income are unconstitutional.

This bill would delete those provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 24344 of the Revenue and Taxation Code
2 is amended to read:

3 24344. (a) Section 163 of the Internal Revenue Code, relating
4 to interest, shall apply, except as otherwise provided.

5 ~~(b) If income of the taxpayer which is derived from or~~
6 ~~attributable to sources within this state is determined pursuant to~~
7 ~~Section 25101 or 25110, the interest deductible shall be an amount~~
8 ~~equal to interest income subject to apportionment by formula, plus~~
9 ~~the amount, if any, by which the balance of interest expense~~
10 ~~exceeds interest and dividend income (except dividends deductible~~
11 ~~under Section 24402 and dividends subject to the deductions~~
12 ~~provided for in Section 24411 to the extent of those deductions)~~
13 ~~not subject to apportionment by formula. Interest expense not~~
14 ~~included in the preceding sentence shall be directly offset against~~
15 ~~interest and dividend income (except dividends deductible under~~
16 ~~Section 24402 and dividends subject to the deductions provided~~
17 ~~for in Section 24411 to the extent of those deductions) not subject~~
18 ~~to apportionment by formula. (1) Subject to paragraph (2), interest~~
19 ~~expense allowable under Section 163 of the Internal Revenue Code~~
20 ~~that is incurred for purposes of foreign investments may be offset~~
21 ~~against dividends deductible under Section 24411.~~

22 ~~(e) Notwithstanding subdivision (b) and subject to paragraph~~
23 ~~(2), interest expense allowable under Section 163 of the Internal~~
24 ~~Revenue Code that is incurred for purposes of foreign investments~~
25 ~~may be offset against dividends deductible under Section 24411.~~

26 (2) For taxable years beginning on or after January 1, 1997, the
27 amount of interest computed pursuant to paragraph (1) shall be
28 multiplied by the same percentage used to determine the dividend
29 deduction under Section 24411 to determine that amount of interest
30 that may be offset as provided in paragraph (1).

31 ~~(d)~~

32 (c) Section 7210(b) of Public Law 101-239, relating to the
33 effective date for limitation on deduction for certain interest paid
34 to a related person, shall apply.

- 1 ~~(e)~~
- 2 ~~(d)~~ Section 163(j)(6)(C) of the Internal Revenue Code, relating
- 3 to treatment of an affiliated group, is modified to apply to all
- 4 members of a combined report filed under Section 25101.

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